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MEMPHIS LIGHT, GAS AND WATER DIVISION
INTERDEPARTMENTAL COMMUNICATION

SARAKYLE, COMMISSIONER
TN PUBLIC SERVICE COMM.

DATE:
3-30-95

TO: Bill Crawford
FROM: Herman Morris, Jr.
RE: Amendment to the MLGW Charter

In December of 1994, during the rate hearing before the City Council, Councilman Whalum raised the question, "Why MLGW could not transfer funds from a Division with a surplus of dollars to a Division operating with less than a surplus of dollars as a way to avoid the need to request rate increases."

He was advised that the MLGW Charter did not permit the commingling of revenues, and specifically required any surplus monies be applied to the reduction of rates in the Division in which the surplus was generated. The Council was advised that MLGW's options, in the face of a given Division's cash shortfall, under the present Charter, are to: raise rates; borrow money in the bond market; borrow money from a another division; or reduce services. He inquired whether or not the Charter had been examined since its inception in 1939 to determine the feasibility, appropriateness, or desirability of continuing to operate in that manner.

We suggested that there might be other barriers to the free commingling of monies, even with a charter amendment, including: the TVA contract, MLGW Bond Resolutions; state financial laws and requirements for governmental entities; federal energy regulation commission; financial requirements; federal energy regulatory commission financial requirements. We agreed to examine the Charter, examine the issues raised, discuss same with staff, and report back to the Council at a future date.

Issue:

May the MLGW Charter be amended for purposes of permitting the free transfer and commingling of revenue between the electric, gas and water systems?

Conclusion:

MLGW's charter as currently written prevents the commingling of funds between divisions.

The MLGW Charter may be amended by ordinance of the City Council and a citywide referendum to expressly permit commingling of funds.

Obligations imposed by the MLGW Charter requiring MLGW to use surplus revenues to reduce rates to its customers in the individual divisions can be interpreted to impose a trustee relationship on MLGW as it relates to those rate-payers. If so, those rate-payers would have a property interest in the surplus funds and could bring suit to enjoin MLGW from permitting the transference of one divisions funds to other divisions, or from transferring funds after amendment. Those sections would have to be deleted from the charter.

Some courts have recognized surplus funds as a property of the rate payers. Rate-payers have been found qualified to bring suit against a municipality to prevent or reverse an act which resulted in the loss of their property interests. At least one court has imposed personal liability on city commissioners for diversion of municipal funds in contravention of a state constitutional provision.

Property interest can be abridged if there is, within constitutional limitations, notice and a fair opportunity to be heard such as a public referendum.

The MLGW Charter which confers its powers will be strictly construed. A reasonable argument in support of amending the corporate Charter would include (1) express authority for joint operation of divisions as determined by the board of commissioners to be both advisable and economical in the interests of better serving all MLGW customers, and (2) the recognized proprietary nature of the utility company.

The charter could be amended as suggested, but there would be other problems to work out. There appears to be no restriction imposed by the MLGW Bond resolutions which would prohibit amending the Charter to permit the transfer of funds between divisions. Neither are there restrictions imposed by the Federal Energy Regulatory Commission, financial standards or industry standards. However, the TVA power contract appears to bar the electric division from transferring funds out. Although it is silent as to receipt of transferred funds in from other divisions, the TVA General Counsel believes the electric division could not participate at all. MLGW probably could amend the charter to permit commingling of monies between gas and water divisions. However, customers could have the right to sue to overturn the decision.

- QUESTION -

Would amending the MLGW Charter permit the free transfer and commingling of revenue between the Electric, Gas and Water Systems?

- ANALYSIS -

The MLGW Charter Must Be Amended To Permit Commingling Of Funds:

Yes; the MLGW Charter must be amended to permit commingling of funds. Section 688 of the charter of the City of Memphis, and the MLGW Charter, expressly mandates that each division of MLGW (electric, gas and water) be "operated independent of each other". Section 687 further mandates that separate books and accounts be kept so as to reflect the separate financial condition of each division and requires that each division be self-sustaining. While the Charter does not expressly forbid the transfer of moneys among the several division, such a mandate is clearly intended under the provisions of Sections 667 and 668. (Note: inter-division loans of money apparently are permitted under Section 689 and are not, therefore, discussed herein).

The prohibition against transfer of funds stands notwithstanding language suggested by the Charter in Section 688 which states that "each of said divisions (electric, gas and water) shall be operated independent of each other, except insofar as the board of light, gas and water commissioners may be of the opinion that joint operation shall be advisable, and economical, in which event the expense incurred in such joint operation, including the salaries of said commissioners, shall be prorated between the several divisions in such manner as the light, gas and water commissioners shall find to be equitable." The issue of whether the board's authority in exercise of its powers pursuant to this provision allows the transfer of funds among division has not been tested. However, we believe in the absence of express authority to transfer funds from one division to another, and in light of implied authority to the contrary, an amendment to the MLGW Charter may be necessary in order to freely transfer funds between divisions.

Amending The MLGW Charter:

The MLGW Charter is an amendment to the City of Memphis Charter. Amending it would follow similar procedures.

A special act, ordinance of the City Council followed by a voter referendum, is required to amend the City of Memphis Charter. see Kentucky-Tennessee Light & Power Co. v. City of Paris, 48 F.2d 795 (6th Cir.) cert. denied, 284 U.S. 638 (1931). Municipal charters are subject to strict construction requiring clear authority for the exercise of powers assumed under them. Metropolitan Gov't v. Miles, 524 S.W.2d 656 (Tenn. 1975). Consequently, care must be

taken in drafting any amendment to state clearly and precisely the desired authority.

Common Law Rights To Oppose Interdivision Transfer Of Funds:

Even if an amendment to the charter were passed there might be common law barriers to commingling of funds from separate divisions. There have been numerous court decisions addressing the issue of whether a municipality can transfer money from one fund to another. In some cities, such transference is expressly prohibited by charter. The decisions of the varied courts which have addressed this issue have turned on the question of (1) whether the rate payers have a property interest in the municipally held moneys and/or (2) whether the funds in question were held in trust for the public.

We have found no recent definitive Tennessee case law. However, law from other jurisdictions is instructive. In Niles v. Union Ice Corp., 133 Ohio St 169, 12 N.E.2d 483 (1938), the court upheld the constitutionality of a statute authorizing the city to "transfer (from one fund to another) any public funds under its supervision" on the theory that the funds in question "did not constitute a fund in trust for the benefit of the consumers, and the consumers acquired no property right therein." In Niles, the Court considered whether surplus funds from a city's electric distribution system could be transferred to a sanitation district fund to pay off the city's indebtedness to that fund. The Court noted that the purchasers of electric energy from a municipally owned electric light and power system lose all interest in the purchase price after it is paid just as if they had purchased energy from a private corporation. The court noted that the revenue thus generated "becomes the exclusive property of the municipality, with the right to use, transfer, or divert (it) to any purpose and in any manner authorized by law."

However, in Little Rock v. Community Chest, 204 Ark 562, 163 S.W.2d 522, the court held a certain use of funds held by the municipality to be unconstitutional "where such revenues had previously been pledged to secure the payment of bonds under a trust indenture providing that, after setting aside sums for maintenance and operation, all other income and funds should be used for the sole purpose of paying principal and interest on the bonds, and for no other purpose, notwithstanding that it appeared that the waterworks system had and would have ample revenue ... to pay all of its obligations as they matured."

Like the municipally owned electric power and light system in Niles, the operating budget of MLGW is derived directly from revenue for rate-payers. Absent a mandate to the contrary, MLGW could be permitted to transfer the funds to other divisions under the theory applied by the court in Niles. Again, while the arguments and conclusions of the courts in Niles and Little Rock

are not binding in this jurisdiction, they give some guidance as to how the issue of property rights in surplus funds which are held by the city in trust may be addressed by a court in Tennessee.

However, even absent the MLGW Charter provisions which arguably preclude commingling of funds, MLGW is governed by a further restriction. Under the MLGW Charter, MLGW is required to "apply any surplus funds remaining after satisfaction of several enumerated obligations to the reduction of rates to consumers." This provision is listed as to each division individually further suggesting the legislative intent to maintain the separate nature of the divisions. As such, it too requires amendment to permit transfer of funds to another division. Further, the obligation to apply surplus funds to rate reduction arguably creates a property interest, thus imposing an obligation similar to that in Little Rock.

The question presented, thus, is whether the obligation to use surplus funds to reduce rates converts MLGW's obligation to that of trustee for the benefit of rate paying customers. If the provision is interpreted to suggest that MLGW is a trustee of the surplus funds, then the rate-payers of one utility division (e.g., water) would be prejudiced if those funds are diverted or transferred to another division (e.g., gas) particularly if the water customer is not also a buyer of gas from the company.

It is my opinion that, under the facts presented in the instant matter, a Tennessee court could find that the customers of MLGW who are entitled to have the surplus funds used to reduce their rates have a property interest in such funds, and further, that MLGW holds those funds in trust for the those customers. The primary reason for this result is that not all MLGW customers take all three services. To the extent that they do not, all customers do not benefit equally from commingling of monies between divisions. As such, a requirement to reduce rates in the division where the surplus occurred is much more equitable than reducing rates in all divisions from the surplus of one division.

As this paper has discussed earlier, however, we believe the City Charter could be amended by a special ordinance to divest those customers of their property interest. The question then becomes, what liability would MLGW incur as a result.

May MLGW Customers Oppose Commingling Of Funds:

Under the Tennessee Constitution, property interests are secured by the Constitution and cannot be taken away except by "due process of law" or "the law of the land." If, in the instant matter, the MLGW Charter, by its terms, creates a legitimate property interest in its customers' entitlement to a specific use of the surplus funds. Procedural due process requires notice and an opportunity to be heard by a fair and impartial tribunal before the property right is

taken away. A referendum on the Charter Amendment should satisfy this requirement.

Where it is found that a citizen has a pecuniary interest in the revenues of a municipal utilities company, such citizen may maintain a suit to enjoin a wrongful transfer of moneys from one fund to another. Von Herberg v. City of Seattle, 20 F.2d 247 (W.D. Wash. 1927) (reversed on appeal for other reasons), cert denied, 278 U.S. 1928). In that case, a taxpayer and holder of city utility bonds was held qualified to challenge the city's right to make transfers from the utilities fund to the railroad fund. The challenge was held to be permissible even though the question had become moot as a result of subsequent re-transfers to pay prior improper transfers.

Applying the rationale of the Washington State Court, MLGW customers holding a property interest in surplus funds could be qualified to enjoin the actions of MLGW even if the Charter is amended. see also Himebaugh v. Canton, 145 Ohio St 237, 61 N.E.2d; Clark v. San Angelo, 269 S.W.2d 594.

Customers could argue that electric revenues are to be used for benefit of electric customers only. Further, courts have gone so far as to impose liability on municipal officers for diversion of money from one fund to another. In City of Newport v. McLane, 77 S.W.2d 27 (Ky. 1934), limited personal liability was imposed upon city commissioners who diverted municipal funds despite a state constitutional provision specifying that "no tax levied and collected for one purpose shall ever be devoted to another purpose."

If MLGW decides to amend its Charter to allow transfer of funds and this decision is opposed by customers, MLGW could conceivably argue as a public utility company, as a public entity, is empowered to protect the best interests of all its customers, that the private property interests of some of the customers can be abridged for the greater good of all MLGW customers. The rules that govern the private sector (corporate or individual) apply generally to a municipality operating a utility. This argument is supported by the Tennessee Court's decision in Killion v. Paris, 192 Tenn. 446, 241 S.W.2d 524 (1951), in which the court stated that a municipality operates through its utility company in a proprietary rather than a governmental capacity.

In the instant matter, the MLGW Charter provides for independent operation except as the board may feel that joint operation is "advisable and economical." An argument could be made that MLGW, in amending its Charter as discussed herein, is operating under the express powers granted by the MLGW Charter and that, having complied with requisite due process requirements of notice and a fair hearing, has decided through its board of commissioners, that transferring funds among the several divisions is both advisable

and economical.

Requirements, And Restrictions Established By Bond Resolutions:

Generally, MLGW borrows money by issuing tax exempt revenue bonds to build capital projects. Bond resolutions passed by MLGW's Board and approved by the City Council establish the framework for such activity. The language in the MLGW Bond Resolution appears to track, in its pertinent parts, the language in the MLGW Charter. Under it, MLGW revenues for a given division are to be applied to eight specific items, in order of priority. Any monies remaining after payment of operating expenses and making the specified payments, may be used by "the division for any lawful purpose which is not contrary with the provision, if any, of any TVA electric power contract" (as per the electric division bond resolution, section 505). Therefore, after revenues are applied in accordance with the provisions of the resolution, such remaining revenues become general revenues of the electric system.

Section 103 of the Electric Resolution provides that it is a contract between the City of Memphis, MLGW and the owners of the electric system bonds. The covenants and agreements contained therein to be performed by the City of Memphis, and MLGW, are for the equal benefit, protection and security of the owners of the electric system bonds.

Should the division determine that it desires to have the ability to commingle the revenues of the three systems, from a bond resolution perspective, two approaches are available:

1. The resolution authorizing the issues of outstanding bonds of the division would have to be amended to permit commingling of revenues of the three systems; and,
2. The resolution authorizing the issuance of outstanding bonds of the division would have to be defeased through the issuance of refunding bonds.

The Amendment Scenario:

MLGW may not be able to materially amend the provisions of the Bond Resolutions without the consent of the owners of the electric system bonds. Attempting to secure such consent could be a difficult, time consuming, and confusing process. It might also threaten the financial rating (AA) of MLGW, to the extent that it created a perception of confusion, instability, or financial problems.

The Refunding Scenario:

Refunding appears to be the most feasible scenario under the circumstances. The refunding bonds would be issued pursuant to a

new bond authorizing resolution which would expressly permit the commingling of revenues of the three systems. Prior to pursuing the refunding approach, a separate tax and financial analysis would be required to determine the tax limitation and financial implications of a global refunding transaction.

Federal Energy Regulatory Commission Regulations, Financial Standards, Industry Standards:

Staff has made inquiry of Rowe and Associates, a consultant which provides support service and expertise in our gas rate matters. They were asked whether or not the amendment of MLGW's Charter to permit commingling of funds between divisions would conflict with Federal Energy Regulatory Commission rules, regulations, financial standards, or industry rules, regulations, financial standards. We have been advised that there appears to be no problem with the Federal Energy Regulatory Commission or industry financial standards with which the consultant is familiar. He recommended contracting outside auditors to review the issue as well.

TVA Contract:

We contacted the General Counsel's Office for the Tennessee Valley Authority and inquired whether or not in their view, an amendment to MLGW's Charter permitting the commingling of funds between the electric division and other divisions of MLGW would violate any of the terms, provisions, and requirements of the TVA contract with MLGW or the TVA Act.

The Tennessee Valley Authority General Counsel advised that this issue is specifically addressed in the power contract between the City of Memphis, MLGW, and TVA, as follows:

"It is hereby recognized and declared that, pursuant to the obligations imposed by the TVA Act, municipality (City) and Board (MLGW) agree that electric system funds and accounts shall not be mingled with other funds and/or accounts of municipality or Board."

The contract goes on to state that these principals are "of the essence of this contract"; "Except as hereinafter provided, municipality and Board shall administer, operate, and maintain the electric system as a separate department in all respects, shall establish and maintain separate funds for the revenues from electric operations, and shall not directly or indirectly mingle electric system funds or accounts, or otherwise consolidate or combine the financing of the electric system, with those of any other of

their operations."

Based on these contractual provisions, TVA contends that although the MLGW Charter could be amended so that it does not prohibit MLGW from commingling funds of its separate operation, it would be inconsistent with the TVA contract for the electric division to participate in such a practice.

MLGW's contract with TVA expires 15 years from the date they are given notice of an intent to terminate by MLGW. There are negatives to notice to terminate, including a termination of incentives which MLGW receives from TVA as part of its extended contractual arrangement.

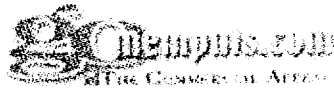
Our review of the TVA contract reveals that:

The City of Memphis and MLGW agreed to use the gross revenues from electric operations for the following purposes:

- (1) Current electric system operating expenses;
- (2) Current payments of interest on electric systems indebtedness;
- (3) funding reasonable reserves for contingencies;
- (4) cash working capital adequate to cover operating expenses for a reasonable number of weeks; and
- (5) tax equivalent payments to municipality general funds.

Surplus revenues may be used for electric system construction or the retirement of system indebtedness (bonds) prior to maturity provided, and "reduce rates and charges from time to time to the lowest practicable levels."

We have found nothing to prevent the Electric Division from receiving funds from other division. However, we agree with the opinion of the TVA General Counsel that the TVA Power Contract would not permit the Electric Division to participate in a transfer of funds from the electric division to other divisions.



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LG&W can fund bonds for arena, not hike rates

- If they move, the Grizzlies probably will keep their current nickname and colors next season.

By Tom Charlier

charlier@gomemphis.com

The Memphis Light, Gas & Water Division will not have to raise customers' rates to fund a \$30 million city bond issue to help pay for an National Basketball Association arena, utility officials say.

Under a tentative agreement reached with the city, LG&W would pay Memphis in-lieu-of-tax payments of \$2.1 million to \$2.5 million annually to fund the bond issue. The money would come from the utility's water division, which unlike the gas and electric divisions, currently does not pay a dividend or in-lieu-of-tax sum.

The LG&W payment is only one part of a complicated plan to finance a \$250 million arena. Almost all of the funding sources identified so far have been public, though local officials have called for contributions from the private sector.

The arena would be built if the NBA Vancouver Grizzlies relocate to Memphis. The different components of the funding plan would require approval from city, county and state officials.

The tentative agreement follows meetings during the past several days between LG&W executives and city officials.

It spells out a plan similar to one used in Nashville to help build Adelphia Coliseum for the National Football League's Tennessee Titans.

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5/11/01

The plan would allow the city to have that piece of the puzzle in place, said John McCullough, chief financial officer for LG&W.

No timetable has been set for repayment of the bonds, though it likely would be in the 20- to 30-year range, McCullough said. The city and LG&W have agreed to place a cap on the amount of the utility's annual payments.

"In order for this to be something that can be worked into our budget, it can't be a number that has no limit to it," McCullough said.

Asked if availability of funds for the arena bonds suggests water customers have been overcharged, McCullough said, "That \$2 million, in the context of our water budget - it's not a large number."

An annual payment of \$2.1 million to \$2.5 million represents 3.5 percent to 4.1 percent of the LG&W water division annual operating revenues.

The 2001 budget projects water division operating revenues of \$60.44 million and a net income after debt expense of nearly \$16.4 million.

McCullough said LG&W has identified numerous cost-saving measures that will allow the utility to make the payments without raising water rates.

"We've got plenty of things that will offset this money," McCullough said.

Among them:

- The utility's new computer-aided dispatch system provides substantial gains in efficiency in customer-service operations, McCullough said. It is expected to produce anywhere from \$1 million and \$2.6 million in annual savings.
- The refinancing of some water bonds will save the utility

\$2.7 million during the next 13 years.

In addition, LG&W officials expect to find more and more savings ideas in future years, McCullough said.

LG&W's water system is considered financially healthy. It is one of only five municipal water utilities to earn a triple-A bond rating, said Colleen Woodell, managing director of public finance for Standard & Poor's, the New York ratings service.

At the same time, LG&W's water rates are comparatively low. A recent survey by Raftelis Financial Consulting of Charlotte, N.C., showed that, out of 42 cities studied, LG&W charged the lowest year-round residential rates for use of 1,000 cubic feet of water.

LG&W hasn't raised its water rates since January 1995. And the utility has pledged not to raise any of its charges until at least the end of 2003.

"We certainly wouldn't do anything that would cause us to violate that pledge," McCullough said.

The bond issue funded by LG&W would account for 12 percent of the total arena-financing plan.

- Tom Charlier: 529-2572

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Ratepayers take issue with LG&W arena payments

By Tom Charlier

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As the owner of a business where a spigot is always flowing, Plato Touliatos wants the Memphis Light, Gas & Water Division to put any extra money it might have to some use other than financing bonds for a National Basketball Association arena.

"Give it back to the ratepayers. It was their money, wasn't it?" said Touliatos, who owns Trees by Touliatos, a nursery that consumes hundreds of dollars' worth of city water a month to supplement its wells.

Under a tentative agreement between LG&W officials and the Herenton administration, the utility's water division would pay the city an in-lieu-of-tax payment of up to \$2.5 million a year. The money would finance a \$30 million bond issue to help pay for the \$250 million arena.

The plan, similar to one used by Nashville to build Adelphia Coliseum, has drawn criticism since its announcement. Although LG&W officials say the payments won't require a rate increase, some ratepayers, including large water customers, say the money should go to rate cuts or other uses.

Ruff Phelps, assistant manager of Reddy Ice, said his company spends close to \$1,000 a month on water bills. Instead of funding arena bonds, the utility should pursue "reduced rates or use that money for education or something that's needed," Phelps said.

Jerry Coletta, owner of Coletta's Italian Restaurants, calls

the bond-financing plan a "terrible idea" that could haunt ratepayers in the future.

"If they've got that much money in reserves, they ought to cut rates," he said.

LG&W officials, however, said cutting rates by \$2.5 million would bring little benefit to the 251,000 households and businesses that get water from the utility.

Pro-rated for usage, the reduction would cut customers' bills 3.7 cents per hundred cubic feet of water - or 29 cents a month for the average household, said John McCullough, chief financial officer for the utility.

In the context of LG&W's water budget, whose operating revenues are projected to exceed \$60 million this year, the \$2.5 million is "not enough money to cause us to increase the rates or decrease the rates," McCullough said.

"The fluctuation in cash flows in the water division between years when we have a hot summer and when we have a mild summer, and the other variables in our capital budget, are much more than that (\$2.5 million)," he added.

Colleen Woodell, managing director of public finance for Standard & Poor's, the New York bond-rating firm, said the existence of sufficient funds for an in-lieu-of-tax payment doesn't mean Memphis water customers have been overcharged.

Water utilities, she said, generally are not run on a "break-even position" because the swings in weather and demand cycles require them to have contingency money.

In fact, the lucrative nature of water utilities has attracted increasing attention from revenue-starved cities across the nation, said Joe Bernosky, water-quality engineer with the American Water Works Association.

In-lieu-of-tax payments from water utilities to cities represent "a concept that certainly is being recognized," Bernosky said.

"Let's face it, the number of revenue streams available to municipalities are few."

The most prominent example of a city taking advantage of water revenues is Nashville, where Metro Water Services makes a \$4 million in-lieu-of-tax payment annually. The money is pledged as a guaranteed revenue stream to help repay bonds issued for Adelphia, home of the National Football League's Tennessee Titans.

Cooper Chilton, assistant director for finance and accounting for Metro Water, said customers' rates actually have been cut since the in-lieu-of-tax payments began. He said the May 1999 cut of 25 percent resulted from efficiency gains that came from modernization and "re-engineering" in the utility.

The \$4 million payment "is just another operating expense that we, luckily enough, (had) not been paying all these years," Chilton said, and the utility remains in good financial health.

The LG&W water division also is strong financially. According to Standard & Poor's, it is one of only five municipal systems to have received a triple-A bond rating.

Industry surveys, such as a recent study by a Charlotte, N.C., firm, also show Memphis residents enjoy some of the lowest water rates of any major city in the nation.

What worries many heavily water-dependent businesses is that the in-lieu-of-tax payment could produce a financial drain that eventually could lead to a rate hike.

Coletta, for one, believes the utility "will have to go up on their rates to replenish their reserves."

John Nielsen, general manager of Sparkle Auto/Truck Care Centre, agrees that LG&W's rates currently are very reasonable, even though his business pays \$500-600 a month in water bills.

But he's skeptical that the arena can be built without an

increase in rates or taxes.

"I'm a little dubious when they say it's not going to cost anything," Nielsen said. "Somehow, it always boomerangs around and nails the businessman."

But Woodell, of Standard & Poor's, said the in-lieu-of-tax payment, by itself, should not threaten LG&W's finances or its triple-A rating.

"The question is, is this really a one-time thing, or does it crack the door for a whole bunch of things?" Woodell said.

McCullough said a key component of agreement between LG&W and the city is a measure placing a firm cap on the amount of the annual payment.

McCullough also said that instead of producing a drain, the arena project could financially benefit LG&W in the long run. That would be especially true if it triggers economic growth.

"MLGW benefits from the growth of the city and the growth of the economy," he said. "The more customers we have, the lower the rates get for everybody."

- Tom Charlier: 529-2572

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 THE
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CHARTER PROVISIONS OF THE CITY OF MEMPHIS
CREATING THE MEMPHIS LIGHT, GAS & WATER DIVISION
AND ESTABLISHING ITS POWERS AND DUTIES
AS AMENDED TO NOVEMBER 4, 1980

Article 65. Light, Gas and Water Division*

Sec. 666. Control and management of municipal electric, gas, water and other energy functions.

Any municipal utility system or systems heretofore or hereafter acquired by the City of Memphis for the manufacture, production, distribution or sale of electricity, natural or artificial gas, or water, and the properties, agencies and facilities used for any such purpose or purposes, shall be under the jurisdiction, control and management of [the] Memphis light, gas and water division, to be constituted and conducted as hereinafter set forth:

* The Memphis light, gas & water division and the board of light, gas & water commissioners were created by Chapter 381 of the Private Acts of 1939 amending the Charter of the City of Memphis. Subsequent to that time, the Charter has been amended by various Private Acts of the Legislature amending the Charter of the City of Memphis by the Home Rule Referendum on November 4, 1980. This compilation inserts the Home Rule amendment where applicable. The section headings are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such section or a part of the section.

The Memphis light, gas & water division shall have jurisdiction, control and management of energy systems such as coal gasification, fuel cell, solar, steam, cogeneration, and all other types of energy systems acquired by the City of Memphis for the manufacture, production, distribution or sale of all forms of energy including electricity, natural or artificial gas, steam or water, and the properties, agencies, and facilities used for any such purpose or purposes. The City Council of the City of Memphis may likewise assign the management or control of the manufacture, production, distribution and sale of energy from refuse or sludge or other properties collected and controlled by other departments of the City upon such terms and conditions as the Council shall prescribe. The Memphis light, gas & water division shall perform such other functions as prescribed by ordinance. (Priv. Act 1939 ch. 381 §1, Home Rule 1980)

Sec. 667. Composition of division and board of light, gas and water commissioners; bond and oath of commissioners.

The Memphis light, gas and water division shall consist of a board of light, gas and water commissioners composed of

five members, and such subordinate officers and employees as may be selected by said board of light, gas and water commissioners as hereinafter provided.

The board of light, gas & water commissioners shall provide for the organization of its own board and for such other subordinate officers and employees as the board deems appropriate. The board of light, gas and water commissioners shall establish such organization as it deems best and advisable for the efficient operation of the Memphis light, gas & water division as presently constituted and any future energy systems.

Each member of said board shall give bond in the sum of ten thousand dollars (\$10,000.00), with good securities, conditioned to faithfully perform the duties of his office, and shall take and subscribe an oath to uphold the Constitution of the United States and of the State of Tennessee, and faithfully to discharge the duties of his office. Said bond shall be acceptable to and approved by the City Council of the City of Memphis, and said oath and bond shall be filed with the comptroller of the City of Memphis. (Priv. Acts 1939, ch. 381, §2; Priv. Acts 1945, ch. 422, §1; Priv. Acts 1951, ch. 388, §1; Home Rule 1980.)

Sec. 668. Appointment and terms of commissioners.

(a) The first board of light, gas and water commissioners shall be the members of the present board of light and water commissioners, as now constituted, who shall serve until the expiration of their present respective terms of office, and until their respective successors are duly elected and qualified, and upon the expiration of their respective terms of office their successors shall be elected by the City Council of the City of Memphis and shall serve for a term of three years, unless sooner removed; and in the event of a vacancy occurring by death, resignation or removal of any of said light, gas and water commissioners, their successors shall be elected only to fill the unexpired term of such commissioner. (Priv. Acts 1939, ch. 381, §10; Priv. Acts 1941, ch. 327, §1; Priv. Acts 1951, ch. 388, §2.)

(b) The board of five members provided in section 1 above [section 667] shall be the present members of the board of light, gas and water commissioners as now constituted, and two additional members to be elected by the board of commissioners of the City of Memphis, all of whom shall serve until the expiration of the terms of the present board

of light, gas and water commissioners, June 1, 1951, and until their successors are elected and qualified; and thereafter the City Council of the City of Memphis shall elect two members of said board to serve for a term of three years, two members to serve for a term of two years and one member, who shall serve for a term of one year, and upon the expiration of their respective terms of office, the successors of the board hereby created shall be elected for a term of three years by the City Council of the City of Memphis. (Priv. Acts 1951, ch. 388, §3.)

Sec. 669. Designation and terms of president.*

The President of the board of light, gas and water commissioners shall no longer be a member of the board of commissioners beginning June 1, 1981. The president shall thereafter be appointed for five year terms by the Mayor, and approved by the City Council of the City of Memphis. In the event of a vacancy occurring by death, resignation, or removal of the president, his successor shall be appointed

* The Home Rule amendment repealed the provision for a vice president of the board. The board provides for its own organization by this amendment.

for a five year term commencing upon his appointment by the Mayor and approval by the City Council. The chairman of the board of light, gas & water commissioners shall perform any necessary acts until the appointment of a president.

Sec. 670. Meetings of commissioners; quorum.

The board of light, gas and water commissioners shall hold regular meetings at least once each week, at a definite time to be fixed by resolution of the board of light, gas and water commissioners, and such special meetings as may be necessary for the transaction of the business of the light, gas and water division. A majority of the board shall constitute a quorum for the transaction of business at any regular or special meeting. Notice of any special meeting may be waived, either before or after the holding thereof; and personal attendance at any special meeting shall constitute a waiver of notice by the members present; and absence of any member from the City of Memphis shall dispense with the necessity of giving such member any notice of any special meeting.

The number of required regular meetings may be changed with the approval of the City Council.

Sec. 671. Salary of president and commissioners.*

The salary of the president shall be fixed by the City Council of the City of Memphis, to be payable in monthly installments. The salary of the members of said board of light, gas and water commissioners shall be fixed by the City Council of the City of Memphis, payable in monthly installments. (Priv. Acts 1939, ch. 381, §11.)

Sec. 672. President to devote entire time to office;
general powers and duties of president.

The president of the light, gas and water division shall give his entire time, and attention to the duties of his office and shall not actively engage in any business or profession not directly connected therewith; and, subject to the regulations of the board of light, gas and water commissioners, shall have general supervision over the operation of said light, gas and water division and of all officers and employees of said light, gas and water division. The president shall keep the board of light, gas and water commissioners advised

* The provision for salary of the vice president of the board of commissioners was repealed by implication by the Home Rule amendment.

as to the general operating and financial condition of said light, gas and water division and he shall furnish a monthly report to the City Council of the City of Memphis with regard to the operation, maintenance and financial condition of the light, gas and water division, and from time to time shall furnish such other information to the City Council of the City of Memphis as they may request.

The president shall attend the meetings of the board of commissioners, but shall have no vote and shall give his entire time and attention to the duties of his office as presently provided in the Charter. The president may be removed in the same manner and subject to the same procedure provided for directors. (Priv. Acts 1939, ch. 381, §11; Home Rule 1980.)

Sec. 673. Duties of vice-president; right of vice-president to serve as chief engineer.*

* This section repealed by 1980 Home Rule amendment.

Sec. 674. Selection, duties, etc., of chief engineer,
secretary and attorneys.

The board of light, gas and water commissioners shall, as soon as practicable after their qualification and organization, certify the nomination of the following subordinate officers to the City Council of the City of Memphis for approval, and said subordinate officers, after having been approved by the City Council, shall serve at the will and pleasure of the board of light, gas and water commissioners, the salaries of said subordinate officers to be fixed by the board of light, gas and water commissioners subject to approval by the City Council of the City of Memphis, to-wit:

- (a) Chief engineer. (Repealed)
- (b) Secretary. A secretary, who shall have charge and custody of all books, papers, documents and accounts of the light, gas and water division, and under whose supervision all necessary accounting records shall be kept, and all checks and vouchers prepared. The board of light, gas and water commissioners shall by resolution designate the persons who

shall sign checks, and all checks shall be signed and countersigned in such manner as the board of light, gas and water commissioners may provide by resolution. Said secretary shall be required to attend in person or by one of his clerks, all of the meetings of the light, gas and water commissioners, and keep a correct record of all the proceedings of that body, and perform such other duties as may be imposed upon him by the board of light, gas and water commissioners. He shall have such clerical assistance in his work as the said board of light, gas and water commissioners shall deem necessary for the work to be properly performed. He shall make and file a bond in such sum as may be fixed by the board of light, gas and water commissioners and shall take the same oath required of members of the board of light, gas and water commissioners.

- (c) Attorneys. One or more attorneys, who shall be practicing attorneys at law, and who shall make and file bonds in such sum as may be fixed by the board of light, gas and water commissioners and take the same oaths required of members of the

board of light, gas and water commissioners, and who shall act as general counsel for the light, gas and water division and advise the board of light, gas and water commissioners and other officers of the light, gas and water division in all matters of law which may arise, and who shall prosecute and defend, as the case may be, all suits brought by or against the said light, gas and water division and all suits to which the said board of light, gas and water commissioners shall be parties. (Priv. Acts 1939, ch. 381, §12; Priv. Acts 1947, ch. 723, §1; Home Rule 1980.)

Sec. 675. Employment, salaries, etc., of other subordinate officers and employees.

The board of light, gas and water commissioners shall be authorized to employ such other engineers, superintendents, assistants, consultants and other subordinate officers and employees as may be necessary for the efficient operation of said light, gas and water division, who shall hold office at the will and pleasure of the board of light, gas and water commissioners and shall receive such salaries as may be

fixed by the board of light, gas and water commissioners; provided that no salary shall be fixed in excess of the sum of four thousand dollars (\$4,000.00) per annum without the consent and approval of the City Council of the City of Memphis; and provided further that the board of light, gas and water commissioners shall certify to the City Council of the City of Memphis for approval the nomination of all subordinate officers and employees whose salaries shall be fixed in excess of four thousand dollars (\$4,000.00) per annum, but the consent and approval of the City Council to any salary or nomination shall not be necessary where the salary of any subordinate officer or employee shall be less than four thousand dollars (\$4,000.00) per year.

Provided, further, that no salaries, fees or other compensation in excess of four thousand dollars (\$4,000.00) shall be paid by the board of light, gas and water commissioners, to engineers, auditors, attorneys, consultants, or any others employed to render extraordinary services to the light, gas and water division, unless such salaries, fees or compensation are approved by the City Council of the City of Memphis.

The City Council of the City of Memphis, by ordinance, may raise the amount of salaries or compensation for employees or others requiring City Council approval to such amount as it may deem appropriate. (Priv. Acts 1939, ch. 381, §13; Priv. Acts 1947, ch. 723, §2; Home Rule 1980.)

Sec. 676. Bonds of officers, agents and employees.

The Memphis light, gas and water division, if the board of light, gas and water division commissioners so elects, may insure the fidelity of any or all of its officers, agents, attorneys or employees, or may require them, or any of them, to execute bond; and the premium on any bond required by this Act, or on any of the aforesaid bonds that may be required by the board of light, gas and water commissioners, or the premium on any fidelity insurance, shall be paid out of the funds of the Memphis light, gas and water division and be charged to operating expenses, unless the board of light, gas and water commissioners shall otherwise expressly provide by resolution. (Priv. Acts 1939, ch. 381, §24.)

Sec. 677. Authority to construct, operate, etc., electric system; purchase of electricity.

The said board of light, gas and water commissioners shall have the power and authority to construct, purchase, improve, operate and maintain, within the corporate limits of the City of Memphis or elsewhere within the limits of Shelby County, an electric plant or system, including without limitation, power plants, transmission lines, substations, feeders, primary and secondary distribution lines, including turbines, engines, pumps, boilers, generators, converters, switchboards, transformers, poles, conduits, wires, cables, lamps, fixtures, accessory apparatus, buildings and lands, rights of way and easements, and all other appurtenances usual to such plants for the purpose of furnishing electric power and energy for lighting, heating, power or any other purpose for which electric power or energy can be used; provided no such electric plant or system shall be operated within the limits of any incorporated municipality, outside the corporate limits of the City of Memphis, without the consent of the governing body of such incorporated municipality.

Said board of light, gas and water commissioners shall have the power and authority to purchase electric current from the Tennessee Valley Authority or from any other person, firm, or corporation as in the judgment of said board of

light, gas and water commissioners shall be proper or expedient, and to make any and all contracts necessary and incident to carry out this purpose and to change, alter, renew or discontinue any contracts entered into by them at any time, provided, that the said board of light, gas and water commissioners shall not enter into any contract for the purchase of electricity for a period longer than five years, unless said contract shall have first been approved by the City Council of the City of Memphis. (Priv. Acts 1939, ch. 381, §3.)

Sec. 678. Authority to construct, operate, etc., gas system; purchase of gas.

The said board of light, gas and water commissioners shall have the power and authority to construct, purchase, improve, operate and maintain, within the corporate limits of the City of Memphis or elsewhere within the limits of Shelby County, a gas plant or system, including without limitation, all accessory apparatus, buildings and lands, rights-of-way and easements, and shall have the power and authority to construct, purchase, improve, operate, maintain, abandon, sell, convey or remove within the corporate limits of the City of Memphis or elsewhere, all other appurtenances

to or accessories for such plants, it being the intention of this Act that the distribution or selling of such natural or artificial gas shall be limited to the City of Memphis or elsewhere in Shelby County.

The board of light, gas and water commissioners shall have power and authority to purchase natural gas from the Memphis Natural Gas Company, or from any other person, firm, or corporation as in the judgment of said board of light, gas and water commissioners shall be proper or expedient, and to make any and all contracts necessary and incident to carry out this purpose and to change, alter, renew, or discontinue any contracts entered into by them at any time, provided, that the said board of light, gas and water commissioners shall not enter into any contract for the purchase of natural gas for a period longer than five years, unless said contract shall have first been approved by the City Council of said City of Memphis. (Priv. Acts 1939, ch. 381, §4; Priv. Acts 1963, ch. 151, §1.)

Sec. 679. Authority to construct, operate, etc., water system.

The said board of light, gas and water commissioners shall have the power and authority to construct, purchase, improve, operate and maintain, within the corporate limits of the City of Memphis or elsewhere within the limits of Shelby County, a water plant or system, including, without limitation, wells, pumping plants, reservoirs, pipes, and all accessory apparatus, buildings and lands, rights of way and easements, and all other appurtenances usual to such plants or systems, for the purpose of producing, distributing, supplying or selling water to the City of Memphis, or to any person, firm, public or private corporation, or to any other user or consumer, in the City of Memphis or elsewhere in Shelby County. (Priv. Acts 1939, ch. 381, §5.)

Sec. 679A. Authority to construct, operate, etc., energy systems.

The board of light, gas & water commissioners shall have the power and authority to construct, purchase, improve, operate, and maintain, within the corporate limits of the

City of Memphis or elsewhere within the limits of Shelby County; or as permitted by State law, the energy systems as set forth above (Section 666) including all necessary equipment, property, right of way, easements, and all other appurtenances usual for such facilities. The board of light, gas & water commissioners shall have authority to make a schedule of rates for said energy systems and for different classes of consumers in accordance with the provisions now provided for establishing service rates with any rates or any change in rates to be presented in an application to the Council of the City of Memphis as presently provided.

The board of light, gas & water commissioners shall have the right to make any and all contracts concerning such energy systems in accordance with the provisions now provided for contracts and have all other powers which presently exist in said board as now provided in the Charter of the City of Memphis. The Memphis, light, gas & water division, with the consent of the City Council, may contract with any person, federal agency, municipality, or public or private corporation for the construction or purchase of energy systems including joint ventures, partnerships, or other financial arrangements under such terms and conditions as are approved by the City Council.

The present provisions of the Charter for rights of condemnation, establishing of rules and regulations, the use of rights of way, and the issuance of bonds, notes or other obligations with the consent of the City Council shall also be applicable to any new energy systems or divisions established.

The distribution of any revenue shall be in accordance with the same distribution as is provided for the disposition of revenue of the gas division as presently set forth in the Charter (Section 693), provided, however, that any surplus funds (sub-section 7) remaining over and above safe operating margins may be devoted to rate reductions or to capital projects for energy as a means of providing funds for energy systems.

The allotment of funds may be changed in such manner as may be deemed necessary by the board of light, gas & water commissioners in contracting with federal agencies or in the issuance and sale of any bonds or notes on behalf of or in conjunction with energy systems in the same manner as is now provided in the Charter for electric, gas or water divisions.
(Home Rule 1980)

Sec. 680. Service rates.

Said board of light, gas and water commissioners shall have authority to make a schedule of rates for the several services and for different classes of consumers; and shall make such rates for the service rendered as will enable them at all times to pay operating expenses, interest, sinking funds, reserves for working capital, renewals and replacements, casualties and other fixed charges; but the rates charged users or consumers outside of the City of Memphis shall not necessarily be as low as the rates within the city. The said light, gas and water commissioners shall have the right to change the schedule of rates for both light, gas and/or water in the city and outside the city, from time to time, as in their judgment may be necessary or proper; provided, that before any change shall be made in rates, the board of light, gas and water commissioners shall be required to present an application to the City Council of the City of Memphis, setting forth the reason for said proposed changes in rates, and said changes in rates shall not become effective until they shall have been approved by said City Council, and provided further, that the board of light, gas and water commissioners and the City Council of the City of Memphis,

shall prescribe rates that will be sufficient to pay all bonds or other indebtedness and interest thereon, including reserves therefor, and to provide for all expenses of operation and maintenance of said plants or systems, including reserves therefor. (Priv. Acts 1939, ch. 381, §7.)

Sec. 681. Authority of commissioners as to contracts generally.

The light, gas and water commissioners shall have the right to make any and all contracts necessary or convenient for the full exercise of the powers herein granted, including, but not limited to, (a) contracts with any person, federal agency, municipality, or public or private corporation, for the purchase or sale of electric energy, gas, or water, and (b) contracts with any person, federal agency, municipality, or public or private corporation for the acquisition of all or any part of any electric, gas, or water plants or systems; (c) contracts for loans, grants or other financial assistance from any federal agency; and, notwithstanding any provision of this or any other Act, in contracting with any federal agency the light, gas and water commissioners shall have power to stipulate and agree to such covenants, terms and

conditions as the board may deem appropriate, including, but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the system or systems conducted and operated by the commission. Except as may be otherwise expressly provided herein, all contracts made by the light, gas and water division shall be entered into and executed in such manner as may be prescribed by the board of light, gas and water commissioners, but no contract for equipment, apparatus, materials, or supplies involving more than \$2,000.00 shall be made except after said contract has been advertised in the manner now or hereafter provided by law for the advertisement of contracts made by the City Council of the City of Memphis in the making of city contracts.

The light, gas and water commissioners shall have no authority to make any contracts entailing an obligation of or involving an expenditure in excess of five thousand dollars (\$5,000.00), without the consent and approval of the City Council of the City of Memphis. The City Council of the City of Memphis may, by ordinance, raise the amount of contracts requiring City Council approval to such amount as

it may deem appropriate and may raise by ordinance, the amount of equipment, materials, or supplies requiring newspaper advertisements for competitive bids.

Provided, however, the light, gas and water commissioners shall have authority to submit bids to and make purchases from the United States Government, or any of its agencies, departments, or divisions, of materials, supplies and equipment needed by the division without the necessity of advertising for or receiving bids for such purchases.

The board of light, gas and water commissioners may enter into such banking contract or contracts as it may determine under the procedures set forth for banking contracts for the City of Memphis with City Council approval. (Priv. Acts 1939, ch. 381, §15; Priv. Acts 1945, ch. 18, §2; Priv. Acts 1947, ch. 723, §3; Home Rule 1980.)

Sec. 682. Use of rights of way, easements, etc., held
by state, county or other municipality.

The Memphis light, gas and water division may use any right of way, easement, or other similar property right

necessary or convenient in connection with the acquisition, improvement, operation, or maintenance of its electric system, gas system or water system, held by the State of Tennessee, Shelby County, or any other municipalities, provided that the State of Tennessee, Shelby County, or any other municipality shall consent to such use. (Priv. Acts 1939, ch. 381, §25.)

Sec. 683. Rules and regulations of commissioners.

Said board of light, gas and water commissioners shall have the power and authority to promulgate and enforce such rules and regulations governing the distribution of light, power, gas and water, as they may deem proper in the operation of said light, gas and water division. (Priv. Acts 1939, ch. 381, §8.)

Sec. 684. Right of condemnation.

The Memphis light, gas and water division is hereby authorized and empowered to condemn any land, easements, or rights of way, either on, under or above the ground, for any and all purposes in connection with the construction, operation,

improvement or maintenance of said electric system, gas system, or water system. Title to such property so condemned shall be taken in the name of the City of Memphis. Such condemnation proceedings shall be pursuant to and in accordance with Sections 23-1401, et seq.; provided, however, that where title to any property sought to be condemned is defective, it shall be divested out of all persons, firms or corporations who have, or may have, any right, title or interest thereto, and be vested by decree of court; provided, further, that the court in which any such proceedings are filed shall, upon application by [the] Memphis light, gas and water division, and upon the posting of a bond with the clerk of the court in such amount as the court may deem commensurate with the value of the property, order that the right of possession shall issue immediately or as soon and upon such terms as the court, in its discretion, may deem proper and just.

Whenever the board of light, gas and water commissioners shall deem it necessary and proper, the right of condemnation herein granted shall extend to and include the right to condemn any property devoted to another public use, whether such property was acquired by condemnation or purchase;

provided, that no property devoted to another public use shall be condemned without the consent and approval of the City Council of the City of Memphis. (Priv. Acts 1939, ch. 381, §9.)

Sec. 685. Removal of commissioners.*

Sec. 686. Restriction as to issuance of bonds or notes, incurring indebtedness, etc.

Said board of light, gas and water commissioners shall have no authority to issue any bonds or notes, or any obligations constituting a lien upon the properties used in the production and distribution of electricity, gas and water in the City of Memphis and Shelby County, except by and with the consent of the City Council of the City of Memphis.

* This section repealed by Home Rule provisions adopting Mayor-Council form of government wherein all members of boards and commissions pursuant to Section 11 are subject to removal under the procedures provided for directors.

The City Council of the City of Memphis may, whenever requested by the board of light, gas and water commissioners, incur indebtedness and issue and sell bonds or notes on behalf of the light, gas and water division to such extent and in such manner as may now or hereafter be authorized by any applicable private or public act or general law of the State of Tennessee. (Priv. Acts 1939, ch. 381, §16.)

Sec. 687. Separate books and accounts to be kept on electric, gas and water operations.

The board of light, gas and water commissioners shall require that separate books and accounts be kept on the electric, gas and water operations, so that said books and accounts will reflect the financial condition of each division separately, to the end that each division shall be self-sustaining, and may require that the moneys and securities of each division be placed in separate accounts.

The board of light, gas & water commissioners shall have power to establish different divisions of the Memphis light, gas & water division for assigning of the separate energy functions or for the efficient operation of the Memphis light, gas & water division and provide for the keeping of such books and records as it may require to properly account for the equitable distribution of expenses. Each of such energy systems [is] to be financially separate with such joint or common expenses as shall be advisable and economical as determined by the board of commissioners. (Priv. Acts 1939, ch. 381, §17; Home Rule 1980.)

Sec. 688. Divisions to be operated independent of each other; exception.*

Each of said divisions (electric, gas and water) shall be operated independent of each other, except insofar as the board of light, gas and water commissioners may be of the opinion that joint operation shall be advisable, and economical,

* See section 657 for creating different divisions for effectual operation and division of expenses.

in which event the expense incurred in such joint operation, including the salaries of said commissioners, shall be prorated between the several divisions in such manner as the light, gas and water commissioners shall find to be equitable. (Priv. Acts 1939, ch. 381, §17.)

Sec. 689. Moneys and funds of one division may be loaned to another; restriction.

Notwithstanding any other provision of the Charter, the moneys and funds of any division may be loaned to another division in such amounts and upon such terms as the board of light, gas & water commissioners may authorize and approve. (Home Rule 1980)

Sec. 690. Authority to create revolving fund; loans to property owners for purpose of making service connections.

The light, gas and water commissioners are authorized and empowered to set aside from any available funds of Memphis light, gas and water division a revolving fund in an amount not to exceed one hundred thousand dollars, and said

commissioners are further authorized and empowered, at their discretion, to make loans not to exceed the sum of one hundred dollars per water service, or gas service, or electric service, to any one property owner who is a citizen and resident of the City of Memphis, or Shelby County, to enable said property owner to install water, gas or electric service connections and appliances. (Priv. Acts 1939, ch. 381, §18.)

Sec. 691. Disposition of revenue of light division.

The revenue received each year from the operation of the light division, before being used for any other purpose, shall be used for the following purposes, in the order named, to-wit:

- (1) The payment of all operating expenses of the light division for the year.
- (2) For interest accruals and sinking fund accruals on bonds and mortgages issued for the benefit of the light division.

- (3) For cash payments to a working capital reserve, a renewals and replacement reserve, and a casualties reserve, for the benefit of the light division, said cash payments to said reserves to be in such amounts as the light, gas and water commissioners think proper and by resolution elect to set up from time to time.
- (4) For payment to the general funds of the municipality a sum equal in amount to what would be the city taxes on the properties of the light division within the city limits of the City of Memphis if said properties were privately owned.
- (5) For payment to a reasonable surplus account which may be used by the board of light, gas and water commissioners for extensions and improvements to the light plant or system and/or for the purchase of outstanding bonds that may have been issued for the benefit of the light division, as the board of light, gas and water commissioners may deem advisable.
- (6) For payment to the general funds of the municipality a sum not to exceed a cumulative return of six

percent (6%) per annum of the equity or investment, if any, of the municipality in the properties of the light division, the said percentage to be fixed by resolution of the City Council of the City of Memphis. Should the said percentage as fixed by the City Council of the City of Memphis exceed a reasonable figure in the opinion of the board of light, gas and water commissioners, the amount to be paid by the board of light, gas and water commissioners to the City Council of the City of Memphis shall be determined by a board of arbitration, consisting of one member of the City Council and one member of the board of light, gas and water commissioners, who shall elect a third member, and the findings of this board of arbitration shall be final and binding on both the City Council and the board of light, gas and water commissioners.

Provided that in no event shall the aforesaid payment to the municipality for any year exceed one-half of the net profits realized by the light division during that year, unless the board of light, gas and water commissioners shall, by resolution, consent thereto.

- (7) Any surplus then remaining, over and above safe operating margins, shall be devoted solely to rate reduction.

It is further provided that said allotment of funds may be changed in such manner as may be deemed necessary by the board of light, gas and water commissioners in contracting with the Tennessee Valley Authority for the purchase of power, or as may be deemed necessary by the City Council of the City of Memphis, with the approval of the board of light, gas and water commissioners, in the issuance and sale of any bonds or notes on behalf of the electric system, or on behalf of the electric system in conjunction with the gas or water systems. (Priv. Acts 1939, ch. 381, §19.)

Sec. 692. Disposition of revenue of water division.

The revenue received each year from the operation of the water division, before being used for any other purpose, shall be used for the following purposes, in the order named, to-wit:

- (1) For the payment of all operating expenses of the water division for the year.

- (2) For interest accruals and sinking fund accruals on bonds or mortgages issued for the benefit of the water division.
- (3) For cash payments to a working capital reserve, a renewals and replacements reserve, and a casualties reserve, for the benefit of the water division. Said cash payments to said reserves to be in such amounts as the light, gas and water commissioners think proper and by resolution elect to set up from time to time.
- (4) For the payment to the general funds of the municipality a sum not to exceed a cumulative return of three percent (3%) per annum of the equity or investment, if any, of the municipality in the properties of the water division, the said percentage to be fixed by resolution of the City Council of the City of Memphis. Should the said percentage as fixed by the City Council of the City of Memphis exceed a reasonable figure in the opinion of the board of light, gas and water commissioners, the amount to be paid by the board of light, gas and

water commissioners to the City Council of the City of Memphis shall be determined by a board of arbitration, consisting of one member of the City Council of the City of Memphis and one member of the board of light, gas and water commissioners, who shall select a third member, and the findings of this board of arbitration shall be final and binding on both the City Council of the City of Memphis and the board of light, gas and water commissioners.

(5) Any surplus thereafter remaining shall be retained by the board of light, gas and water commissioners and may be used by them for expansion and enlargement of the water division and/or purchase of bonds that may have been issued and outstanding for the benefit of said division.

(6) Any surplus thereafter remaining over and above safe operating margins, shall be devoted solely to rate reduction.

It is further provided that said allotment of funds may be changed in such manner as may be deemed necessary by the

City Council of the City of Memphis with the approval of the board of light, gas and water commissioners in the issuance and sale of any bonds or notes on behalf of the water system, or on behalf of the water system in conjunction with the gas or electric systems. (Priv. Acts 1939, ch. 381, §20.)

Sec. 693. Disposition of revenue of gas division.

The revenue received each year from the operation of the gas division, before being used for any other purpose, shall be used for the following purposes, in the order named, to-wit:

- (1) For the payment of all operating expenses of the gas division for the year.
- (2) For interest accruals and sinking fund accruals on bonds or mortgages issued for the benefit of the gas division.
- (3) For cash payments to a working capital reserve, a renewals and replacements reserve, and a casualties reserve, for the benefit of the gas division.

Said cash payments to said reserves to be in such amounts as the light, gas and water commissioners think proper and by resolution elect to set up from time to time.

- (4) For payment to the general funds of the municipality a sum equal in amount to what would be the city taxes on the properties of the gas division within the city limits of the City of Memphis if said properties were privately owned.
- (5) For payment to a reasonable surplus account which may be used by the board of light, gas and water commissioners for extensions and improvements to the gas plant or system and/or for the purpose of outstanding bonds that may have been issued for the benefit of the gas division, as the board of light, gas and water commissioners may deem advisable.
- (6) For the payment to the general fund of the municipality a sum not to exceed a cumulative return of six percent (6%) per annum of the equity or investment, if any, of the municipality in the properties of

the gas division, the said percentage to be fixed by resolution of the City Council of the City of Memphis. Should the said percentage as fixed by the City Council of the City of Memphis exceed a reasonable figure in the opinion of the board of light, gas and water commissioners, the amount to be paid by the board of light, gas and water commissioners to the City Council of the City of Memphis shall be determined by a board of arbitration, consisting of one member of the City Council of the City of Memphis and one member of the board of light, gas and water commissioners who shall select a third member, and the findings of this board of arbitration shall be final and binding on both the City Council of the City of Memphis and the board of light, gas and water commissioners; provided that in no event shall the aforesaid payment to the Municipality for any year exceed one-half of the net profits realized by the gas division during that year, unless the board of light, gas and water commissioners shall, by resolution, consent thereto.

- (7) Any surplus thereafter remaining over and above safe operating margins, shall be devoted solely to rate reduction.

It is further provided that said allotment of funds may be changed in such manner as may be deemed necessary by the City Council of the City of Memphis, with the approval of the board of light, gas and water commissioners, in the issuance and sale of any bonds or notes on behalf of the gas system, or on behalf of the gas system in conjunction with the electric or water systems. (Priv. Acts. 1939, ch. 381, §22; Priv. Acts 1945, ch. 18, §1; Priv. Acts 1947, ch. 491, §1; Priv. Acts 1959, ch. 224, §1.)

Sec. 694. Investment and reinvestment of funds or reserves.

The board of light, gas & water commissioners shall provide for the investment and reinvestment of its funds and reserves as determined in the discretion of the board of commissioners, and the funds of all divisions may be combined for the purpose of obtaining the best investment. The board shall not be limited but shall be able to make such investments

as authorized by state law and as the board of light, gas & water commissioners may deem best with such security as the board may deem proper. Any profit or loss resulting from any such investment or reinvestment shall be credited or charged to the several divisions in proportion to the respective funds so invested and reinvested. (Home Rule 1980.)

Sec. 695. Matters requiring Council approval.

Any matters requiring Council approval shall be forwarded through the Mayor's designated liason to the City Council for the City of Memphis for approval. (Home Rule 1980.)

Sec. 696. City, school board, hospital, crematory, police stations, etc., to be furnished water free of charge.

The light, gas and water commissioners shall furnish to the City of Memphis free, sufficient water for all fire hydrants of the city for fire protection and for sprinkling the streets of the city, and shall also furnish free, sufficient water for the school board, the general hospital, the city crematory, and the police stations, and may also furnish

free to said city such additional water as the light, gas and water commission may deem expedient for public purposes. (Priv. Acts 1939, ch. 381, §21.)

Sec. 697. City and its governmental agencies to be furnished electric current and gas; payment to be based on prevailing rate scales.

The light, gas and water commissioners shall furnish to the City of Memphis electric current and gas for all of its governmental agencies, and the City of Memphis shall be required to pay for said current and gas under the prevailing rate scales adopted for the sale of electric current and gas. (Priv. Acts 1939, ch. 381, §26.)

Sec. 698. Act not to impair existing obligations; existing contracts binding upon division.

This Act shall not in any way impair any obligations of the City of Memphis, or the board of water commissioners or the board of light and water commissioners of Memphis light and water division, to any person or persons, and shall not change or alter the obligations of any existing contracts,

but all contracts outstanding, heretofore made under the existing law, shall be binding upon Memphis light, gas and water division as herein established. (Priv. Acts 1939, ch. 381, §6.)

Sec. 699. Construction of Act.

The powers, authority and rights conferred by this Act shall be in addition and supplemental to, and the limitations imposed by this Act shall not affect the powers conferred by any other general, special, or local law; and this Act is hereby declared to be remedial in nature, and the powers hereby granted shall be liberally construed to effectuate the purpose hereof, and to this end the Memphis light, gas and water commissioners shall have power to do all things necessary or convenient to carry out the purposes hereof, in addition to the powers expressly conferred in this Act. (Priv. Acts 1939, ch. 381, §27.)